84-1053

NO.

Office-Supreme Court, U.S.
FILED
JAN 2 1985
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1984, TERM

THE ECCLESIASTICAL ORDER
OF THE ISM OF AM, INC., PETITIONER

V.

COMMISSIONER OF INTERNAL REVENUE

- APPENDIXES A and B -

TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH FALCONE

4000 Town Center
Suite 500
Southfield, MI 48075
(313) 357-0666

ATTORNEY FOR PETITIONER

84-1033

TABLE OF CONTENTS

APPENDIX A

OPINION OF THE SIXTH CIRCUIT COURT OF APPEALS.....A-1

ORDER DENYING PETITION FOR REHEARING ENBANC.....A-5

APPENDIX B

ORDER OF THE UNITED STATES TAX COURT DENYING MOTION TO SUPPLEMENT THE RECORD.....B-1

MEMORANDUM SUR ORDER OF UNITED STATES TAX COURT DENYING MOTION TO SUPPLEMENT THE RECORD.....B-3

OPINION OF THE UNITED STATES TAX COURT.....B-9

DECISION OF UNITED STATES TAX COURT.....B-36

ORDER AND OPINION OF UNITED STATES TAX COURT DENYING MOTION FOR RECONSIDERATION.....B-37

ORDER AND OPINION OF UNITED STATES TAX COURT DENYING MOTION TO VACATE OR REVISE THE DECISION.....B-39

APPENDIX C

ADMINISTRATIVE RULING
OF THE IRS INTIALLY
DENYING REQUEST FOR
TAX EXEMPT STATUS.....C-1

FINAL ADMINISTRATIVE
ADVERSE RULING OF THE
IRS DENYING REQUEST FOR
TAX EXEMPT STATUS.....C-17

APPENDIX D

26 USC 170(b).....D-1

26 USC 501.....D-2

26 USC 508.....D-4

26 USC 509.....D-6

26 USC 7428.....D-7

5 USC 554.....D-9

5 USC 556.....D-14

5 USC 706.....D-15

TAX COURT RULE 210(b)(11).....D-17

TAX COURT RULE 217(b).....D-18

FIRST AMENDMENT TO
THE UNITED STATES
CONSTITUTION.....D-20

FIFTH AMENDMENT TO
THE UNITED STATES
CONSTITUTION.....D-20

83-1484

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC.,

Petitioner-Appellant,

On Appeal from the United States Tax Court

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Decided and Filed July 31, 1984

BEFORE: LIVELY, Chief Circuit Judge, KEITH, Circuit Judge, and ALLEN*

PER CURIAM. Appellant, the Ecclesiastical Order of the Ism of Am, Inc., appeals from the decision of the United States Tax Court sustaining the determination of the Commissioner of Internal Revenue that

---

*Chief Judge Charles M. Allen, U.S. District Court, Western District of Kentucky, sitting by designation.

appellant was not an exempt organization under §501(c)(3) of the Internal Revenue Code, 26 U.S.C. §501(c)(3). For the reasons set forth below, the decision of the Tax Court is affirmed.

On January 15, 1980, appellant filed with the Internal Revenue Service (IRS) an Application for Recognition of Exemption, Form 1023. Appellant sought recognition of exemption from federal income tax under §501(c)(3) of the Internal Revenue Code as a religious organization.

83-1484 pc p2

After several written and oral discussions with the church about its status as a religious organization, the IRS issued its final denial of the application on February 18, 1981.

The IRS found that the Ism of Am in its literature entitled Untaxable I-III emphasized almost exclusively tax

advantages and how to illegitimately avoid income taxes. The IRS also considered the organization's fee schedule for purchasing religious titles before concluding that the Ism of Am did not operate for an exempt purpose under the Code and was not a church under §501(c)(3).

The organization filed a petition for declaratory judgment with the United States Tax Court. The Tax Court upheld the Commissioner's determination that the Ism of Am was not a church operated exclusively for an exempt purpose under §501(c)(3). The organization then filed this appeal.

Based upon the thoughtful and thorough opinion of the United States Tax Court, reported at 80 T.C. 833 (1983), we affirm the denial of exempt status under §501(c)(3) of the Internal Revenue Code, 26 U.S.C. §501(c)(3).

ISSUED AS MANDATE: October 23, 1984

COSTS: Appellee to recover

Printing costs $29.60

No. 83-1484
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ECCLESIASTICAL ORDER OF THE ISM OF AM, INC.,

Appellant

vs.

ORDER DENYING PETITION FOR REHEARING EN BANC

COMMISSIONER OF INTERNAL REVENUE,

Appellee

BEFORE: LIVELY, Chief Circuit Judge and
KEITH, Circuit Judge and
ALLEN, Chief District Judge*

A majority of the judges of the Court not having favored rehearing en banc, the petition for rehearing en banc has been referred to the hearing panel for disposition.

Upon consideration, the Court concludes that the petition for rehearing

---

*Chief Judge Charles M. Allen, U.S. District Court, Western District of Kentucky, sitting by designation.

en banc is without merit. Accordingly, it is ORDERED that rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

October 15, 1984

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC., Petitioner,	)
v.	Docket No. 10769-81 X
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)

O R D E R

For the reasons appearing in the Memorandum Sur Order served herewith, it is

ORDERED that petitioner's Motion for More Definite Statement, filed on August 24, 1981, is denied. It is further

ORDERED that petitioner's Motion to Supplement the Record, filed on September 21, 1981, is denied. It is further

ORDERED that the following requests, contained in petitioner's Motion to Supplement the Record, are denied:

(1) Petitioner's request to obtain

discovery; and

(2) Petitioner's request for a trial.

(Signed)Francis J. Cantrel

Special Trial Judge

Dated: Washington, D.C., Sept. 23, 1981

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC.,

Petitioner,

v.

Docket No. 10769-81 X

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MEMORANDUM SUR ORDER

This case was called from the calendar for the Motions Session of the Court at Washington, D.C., on September 23, 1981, for hearing on petitioner's Motion for More Definite Statement, filed on August 24, 1981. On September 21, 1981, petitioner filed a Motion to Supplement the Record, which the Court directed to be argued today, and counsel for the parties were so informed by a representative of the office of the Clerk of the Court. Respondent's counsel appeared at the hearing and presented argument. The Court also had before it

for its consideration petitioner's statement pursuant to Rule 50(c), filed on September 21, 1981, and respondent's Memorandum in Opposition to Petitioner's Motion for More Definite Statement, filed on September 16, 1981. At the conclusion of the hearing the Court took petitioner's motions under advisement.

Petitioner seeks to have us direct respondent to file a further and better statement of his Answer respecting paragraphs 3, 4, 7, 8(H) to (N), 10, and 11 since respondent's answers contain mere denials (1) without reasons thus making the answer in those respects (2) so vague and ambigious that petitioner cannot reasonably frame a responsive pleading thereto.

Rule 213 (a)(2), Tax Court Rules of Practice and Procedure,[1] provides in

---

[1] All rule references are to the Tax Court Rules of Practice and Procedure.

pertinent part that the answer "shall contain a specific admission or denial of each material allegation of the petition." Respondent has done precisely that. He is required to do no more. There is no requirement, in these circumstances, where the burden of proof is upon petitioner under Rule 217(c)(2)(i), that respondent provide a reason for each denial in the complained of paragraphs. Petitioner's Motion for More Definite Statement, filed on August 24, 1981, will be denied.

We next turn to petitioner's Motion to Supplement the Administrative Record. Petitioner contends that the administrative record is not complete and requests that respondent's written memoranda of a conference held on December 10, 1980, be included in the administrative record.

Respondent contends, relying on Houston Lawyer Referral Service, Inc. v.

Commissioner, 69 T.C. 570 (1978), that oral representations made at conference are not part of the administrative record and, furthermore, if petitioner wanted a written memorandum of the conference included in the administrative record, it should have submitted one to respondent during the administrative process. Respondent further argues the petitioner's Freedom of Information Act request is an attempt to circumvent the declaratory judgment rules.

Rule 210(b)(1) defines the administrative record as including all documents submitted to the Internal Revenue Service and all written correspondence between the parties. That definition does not include internal memoranda of a party and interagency memoranda. Furthermore, oral representations are not a part of the administrative record, even though the

statements were made at a conference with respondent. Houston Lawyer Referral, supra at 575. Petitioner's request to supplement the administrative record will be denied.

Petitioner's request to obtain discovery of other internal memoranda is likewise denied since this Court's review in declaratory judgment actions not involving revocations is limited to the items contained in the administrative record as defined by Rule 210(b)(11). Furthermore, petitioner's argument that it relied on respondent's representations that he would preserve oral statements in writing is unfounded where Houston Lawyer Referral was filed on January 19, 1978, giving petitioner more than adequate notice concerning the status of oral representations before its December 10, 1980, conference.

Petitioner's request for a trial will

likewise be denied since Rule 217(a) and (b) allows the submission of additional evidence only upon the showing of good cause, which is not present here.

(Signed) Francis J. Cantrel

Special Trial Judge

Dated: Washington, D.C.
September 23, 1981

80 T. C. No. 43

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC., Petitioner
v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 10769-81X. Filed May 2, 1983.

Petitioner seeks a declaratory judgment that it is entitled to tax-exempt status as a religious organization under section 501(c)(3). Petitioner recruits new members by emphasizing to a great extent the tax benefits of becoming a minister in petitioner's "religion." Tax avoidance counseling permeates petitioner's literature. Held, petitioner is not entitled to exemption from Federal taxation under sections 501(a) and 501(c)(3), I.R.C. 1954, as amended, because it fails the operational test of section 501(c)(3) in that petitioner's tax counseling serves a substantial nonexempt purpose.

Joseph Falcone, for the petitioner.

Alan C. Levine, for the respondent.

OPINION

TANNENWALD, Chief Judge: This is an action for declaratory judgment pursuant to section 7428.[1] Petitioner filed an application for recognition of exemption from Federal income tax on January 15, 1980, seeking exemption under section 501(c)(3) and claiming to be a church within the meaning of sections 509(a)(1) and 170(b)(1)(A)(i). After a lengthy administrative review, respondent, on February 18, 1981, issued an adverse ruling which stated in part that --

> You are not operated exclusively for religious or any exempt purpose described in section 501(c)(3) of the Code. You are not operated in such a manner that no part of your net earnings will inure to the benefit of any individual. In addition,

---

[1] Unless otherwise indicated, all section references are to the Internal Revenue Code as amended and in effect and all references to Rules are to the Tax Court Rules of Practice and Procedure.

you are operated for private rather than public interests. We have also determined that if you were described in section 501(c)(3), you would be a private foundation because you are not a church within the meaning of section 170(b)(1)(A)(i), the only basis upon which you claim non-private foundation status.

Petitioner then timely filed its petition herein.

This case was submitted fully stipulated pursuant to Rule 122. The administrative record filed by respondent is incorporated herein by this reference. See Rule 217.

Petitioner was incorporated in Michigan in 1978. Its officers are Rev. George N. Baustert, president, Cardinal Chalmers O. Smith, vice-president, and Janette C. Schwedt, secretary-treasurer.[2]

Petitioner is composed of a home

---

[2] Petitioner's officers are apparently unrelated. However, Rev. Baustert and Ms. Schwedt live together and Ms. Schwedt was described by petitioner, in correspondence with respondent, as Rev. Baustert's "companion and confidant."

office and approximately 26 chartered orders. At times, petitioner contends that each order is a separate entity; at other times, petitioner appears to suggest that all orders are part of a single entity. It is clear, however, that only the home office is a party to the present action.[3]

Petitioner conducts an active campaign for followers. Originally, petitioner sought converts through a pamphlet entitled "The Proof of Am," which explains the Ism of Am's deistic beliefs.[4] No one converted, however, because, as petitioner candidly admits, "[s]omething

---

[3] By letter dated July 15, 1980, petitioner expressly declined to apply for a group ruling.

[4] For purposes of this opinion, we accept as true petitioner's contention that its deistic beliefs are, in fact, held. Similarly, we accept as true the petitioner's descriptions of its "religious" activities.

was missing!" After studying materials developed by the Universal Life Church, Rev. Baustert wrote new literature and instituted several refinements in petitioner's method of operations. These changes greatly enhanced petitioner's recruitment effort.

The new recruiting approach developed by petitioner emphasizes to a great extent the tax benefits of becoming a minister in the Ism of Am. This emphasis is illustrated in the "education" given to new ministers, in the materials distributed by petitioner to potential converts, and in the training given to petitioner's "membership counselors."

Degrees and/or titles are awarded by petitioner to ministers upon completion of each of four stages of the "Phases of Awareness." Although certain pamphlets are provided with each "phase," no check is provided to assure that each minister

studies and understands them. However, some of these pamphlets are, no doubt, studied very carefully, for, as petitioner observes, completion of the "Phases of Awareness" assures that "you will be an expert in the administration and benefits of a Chartered Order of ISM of AM." (Emphasis added.)

Petitioner's "Awareness" program is structured as follows:[5] For a "donation" of $25 (Phase I) one is ordained as a Minister in the Ism of Am. Each new minister receives instructions entitled "Ecclesiastical Orders of Law I" and a copy of "The Book of Am -- The Enlightenment."[6] For a "donation of $75

---

[5] The "Phases of Awareness" are discussed in detail in petitioner's recruiting brochure entitled "The Existence of Am."

[6] Each new minister also receives an 8" x 10" Credentials of Ministry Certificate "ready for framing," a "personal signant of the ISM OF AM key ring (suitable for converting to a neckless)" [sic], and instructions for performing civil wedding ceremonies.

(Phase II) one receives a Doctorate of Divinity degree and a "Legal Charter * * * complete with federal and state exempt numbers." Instructions provided include "Ecclesiastical Orders of Administration I" and "Untaxables I." For a "donation" of $50 (Phase III), one is bestowed with a Certificate of Bishop and instructions entitled "Untaxables II." Finally, for a "donation" of $50 (Phase IV) one is canonized to Cardinal. Instructions received include "Untaxables III" and "Share with Am."

The "instructions" that accompany each phase discuss, in great detail, the tax benefits of being a minister in the Ism of Am. Nothing would be gained by describing these documents in detail; a few examples reveal their tenor. Untaxables I begins with the self-serving caveat that "The Ism of Am is not a tax reform movement, and it is important to

note that it is not our intention to teach you how to evade taxes." The pamphlet then provides, inter alia, a laundry list of personal expenses incurred by the minister that the order can pay as part of the minister's housing allowance. Lest anyone be concerned about the propriety of such actions, the pamphlet goes on to state that --

> It may seem that, if one starts a Chartered Order, donates money, and then uses the money to benefit the officers of the Order, this action might be considered "Self Dealing". Had you decided to form your own church wherein you would be responsible for control of the entire church, the problem of "Self Dealing" might be very real. However, since your Chartered Order is as much an Order of the ISM of AM as the Home Office, you need not be concerned about self dealing. All ministers of the ISM of AM are members of and make contributions to The Ecclesiastical Order of the ISM of AM, Inc. What the Order does with these contributions is of no concern to others outside of the Order. Not all donations donated to the Catholic Church are required to be sent to the Pope. [Emphasis added.]

Untaxables II further "educates" one in the "benefits" of being a minister in the

Ism of Am. In an illuminating passage,

Untaxables II states that --

Being a Minister of AM, you are entitled to be reimbursed for using your personal auto for Order related business. However, you will be required to keep daily records of this useage since, unlike the Minister's housing allowance, all money received by the Minister as an auto allowance is considered TAXABLE income to the Minister. The Minister is allowed to deduct 17 ¢ per mile for the first 15,000 miles, and 10 ¢ per mile for all mileage over 15,000, for all mileage driven on church related business.

Most Ministers prefer to have their Order own the auto, and be authorized as the Minister of the Order, to exclusive use of the vehicle. This way the Order is responsible to pay all associated operational costs, including gas, oil, insurance, license and registration fees, as well as maintenance and repairs. This is possible only if the vehicle is used primarily in Order work. Since you as the Minister are always seeking new members to "Share With Am" everywhere you go, the auto is indeed being used for the benefit of your Chartered Order, and the free use of the auto IS NOT considered taxable income to the Minister. [Reproduced literally; emphasis added.]

In another illuminating passage,

Untaxables II states that --

THE FAMILY OF AM

Being a Minister of AM, you are now

privileged to have your Chartered Order provide you, as the minister, with a home, food, clothing, insurance, travel expenses, etc. However, under the law, your order is not authorized to provide your wife and/or children with their worldly needs. Of course your wife and children, 18 years or older, are privileged to become Ministers of AM in their own right and enjoy the benefits guaranteed by law to a Minister of a Chartered Order, nonetheless, your children and/or congregational members that are younger than 18 years are not eligible for tax exempt compensations from your order. But, by the law, your Order is authorized to pay for any maintenance, improvements or repair to your home, as provided by your Order, and may very well hire your children for such services without regard as to the amount of payment. As long as none of these children receive more than $2,600 per annum, they are not required to even file income tax returns. They can use these earnings to provide for themselves the necessities and pleasures that you as the Minister are not authorized to provide them with on a direct basis, using your Chartered Orders' assets. [Reproduced literally; emphasis added.]

Untaxables III advises that "there is a way * * * to significantly reduce the amount of withholding taxes taken from [your] paychecks. Ministry in the ISM of AM is the answer." (Emphasis added.)

Orders of Law I claims that "The wealthy

families in this country have taken advantage of the tax laws of this country for more than two centuries. It is for this reason that we do not have to explain or defend our actions regarding the avoidance of taxes." (Emphasis added.) Orders of Administration I states that "[e]ach Chartered Order is granted the PRIVILEGE of using the Federal and State identification numbers and the TAX EXEMPT status of the Home Office. This relieves the Charter Order of the responsibility of dealing with the IRS."[7] The pamphlet also contains the jingle "Run your business with businesslike finesse, and you'll never be the business of the IRS."

---

[7] Similarly, petitioner's "charter agreements," which are presented to each new order in Phase II, provide that "the order is privileged to maintain a nonprofit status utilizing the corporate numbers of the Home Office. State No. 707-598. IRS number 38-2257252." However, the "IRS number" referred to is not, as petitioner seems to imply, a "tax-exempt" number (see p.5, supra); it is merely an employer identification number.

(Emphasis in original.) Similarly, the pamphlet "The Rational Religion of Rational Humankind," which is distributed to potential converts to "set[] the attitude for acceptance of the I AM U + U AM I Vow" (emphasis added), states, "we would be remiss in our duties if we did not provide for our ministers and members to participate in the FREE RIDE being given to the Pope, Billy Graham, Ms. Carter, ad infinitum."

The "training" given to a membership counselor consists of instructing the minister to review the materials provided in the four "Phases of Awareness"[8] and having him or her take a "licensing examination" which is "graded" at the home office and then returned to the "licensed"

---

[8] Therefore, only cardinals, who have "donated" $200 to petitioner, are eligible to become membership counselors.

counselor for reference purposes.[9] Of the 42 true/false and 8 multiple choice questions asked before a minister can become a membership counselor, virtually all deal with some aspect of tax law or administration procedure. For example, question 15 "asks": "The maximum deduction in any one year, a person can take on their income taxes is 50% of adjusted gross income," and question 45 "asks": "The best financial benefits will accrue to the minister who: (A) Receives a normal salary and use of an Order-owned vehicle[;] (B) Receives a rental allowance and an auto allowance[;] (C) Receives a rent-free living quarter and uses an Order-owned vehicle[;] (D)

---

[9] Petitioner provides the minister with a strong financial incentive, in addition to any nonpecuniary gratification he or she might receive, to recruit new members. As "The Existence of Am" pamphlet explains, a membership counselor "earn[s] a tax free income for [his or her] Order of $100.00 for each new member" he or she brings in.

Receives a housing allowance and an auto allowance[.]" Several questions seek to reinforce, in the minds of the prospective membership counselors, the "legality" of petitioner's tax benefits. For example, question 19 "asks": "Federal government has the right by law to determine if a particular Order is legal or not," and question 31 "asks": "The ISM of AM will defend its chartered congregations against an attack by the IRS."

To qualify for exemption under section 501(c)(3), petitioner must show (1) that it is organized and operated exclusively for religious or charitable purposes, (2) that no part of its earnings inure to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in

political activity. Section 1.501(c)(3)-1, Income Tax Regs.

Respondent contends that petitioner is not exempt because (1) it is operated for the substantial nonexempt purpose of encouraging the avoidance of payment of Federal income taxes, (2) its net earnings inure to the benefit of its members, and (3) it serves private, rather than public, interests.[10]

Section 501(c)(3)'s operational test requires that an organization's activities primarily serve one or more exempt purposes and not, except to an insubstantial degree, a nonexempt purpose. Section 1.501(c)(3)-1(c)(1), Income Tax Regs. The existence of a "single * * *

---

[10] Respondent also argues that even if we are to find that petitioner is tax exempt under section 501(c)(3), petitioner is not excepted from foundation status under section 509(a)(1) because petitioner has failed to show that it is a church within the meaning of section 170(b)(1)(A)(i).

[nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly * * * [exempt] purposes." Better Business Bureau v. United States, 326 U.S. 279, 283 (1945). See also, Presbyterian & Reformed Publishing Co. v. Commissioner, 79 T.C. 1070 (1982); Copyright Clearance Center v. Commissioner, 79 T.C. 793 (1982); Basic Bible Church v. Commissioner, 74 T.C. 846 (1980); First Libertarian Church v. Commissioner, 74 T.C. 396 (1980).

We find that petitioner is not operated exclusively for exempt purposes under section 501(c)(3). Petitioner's substantial nonexempt purpose consists of counseling individuals, for specific "donations," on the purported tax benefits available to ministers of the Ism of Am under the Internal Revenue Code. This counseling is clearly not religious, nor

does it qualify as "educational" within the context of section 501(c)(3). Even if one assumes that the tax information disseminated by petitioner is not misleading or distorted (an assumption that is at least dubious),[11] the information is no different from that furnished by a commercial tax service, albeit within a narrower field (i.e., tax benefits to ministers and churches) and a narrower class of customers (i.e., petitioner's ministers). Consequently, petitioner serves private, rather than public, purposes. See Christian Stewardship Assistance v. Commissioner, 70 T.C. 1037, 1041 (1978). Moreover, petitioner's premise that a religious

---

[11] Petitioner repeatedly seeks to convince potential converts that the organization is tax exempt (see n.7, supra) and that ministers in the Ism of Am will, in fact, receive the suggested tax benefits. See pp. 5-6, supra.

organization's disbursements to its ministers, regardless of amount, cannot be successfully challenged by respondent has been repeatedly rejected. See Church of the Transfiguring Spirit v. Commissioner, 76 T.C. 1 (1981); Southern Church of Brotherhood Assembled v. Commissioner, 74 T.C. 1223 (1980).[12] The tax information and advice so permeates petitioner's

---

[12] Section 501(c)(3) specifically requires that "no part" of the organization's net earnings "inure[] to the benefit of any private shareholder or individual." The inurement requirement has been construed to incorporate a "reasonableness" standard. See People of God Community v. Commissioner, 75 T.C. 127 (1980); Saint Germain Foundation v. Commissioner, 26 T.C. 648 (1956). Petitioner's "instructions" focus on maximum tax benefits; no consideration is given to the "reasonableness" limitation.

literature [13] that we cannot help but conclude that although petitioner may well advocate belief in the God of Am, it also advocates belief in the God of Tax Avoidance. We conclude that petitioner's activities constitute a substantial nonexempt purpose.

On brief, petitioner discusses its religious activities at great length and contends that it "is primarily engaged in the furtherance of what some may call its unorthodox religious beliefs, which, despite the opinion of the Respondent,

---

[13] We recognize that some of petitioner's literature is relatively devoid of the tax avoidance message. For example, both "The Book of Am - The Enlightenment" and the pamphlet "The Proof of Am" mention taxes only once, in a sentence which states that, "[m]oreover, beyond the possession of such power over others, the church is materially the richest corporation in the world and for the most part pays no taxes." However, the rest of petitioner's literature contains so many suggestions and recommendations regarding maximizing tax benefits that one cannot but conclude that a substantial nonexempt purpose permeates the literature taken as a whole.

fall within the 'protections of the * * * First Amendment,'" citing The Church in Boston v. Commissioner, 71 T.C. 102 (1978). For purposes of this opinion, we have accepted as true petitioner's description of its activities and its contention that its "unorthodox religious beliefs" are, in fact, held. See note 4, supra. Contrary to petitioner's contentions, however, such a finding does not require us to conclude that petitioner is tax-exempt because, as we have already noted, the existence of a single substantial nonexempt purpose destroys exempt status. See pp. 10-11, supra, and cases cited thereat.

Petitioner presents three arguments why its emphasis on tax advantages and administrative details does not violate the operational test of section 501(c)(3). First, petitioner contends that it would be remiss if it did not share this tax

information with its members. We disagree. There is a big difference between informing members that ministers may be entitled to special tax benefits, as an incident to carrying on primarily religious activities, and suggesting innumerable methods by which ministers can maximize tax benefits, which is carried on as a substantial activity in and of itself. Petitioner's activity in this regard is so pervasive that it goes far beyond any bona fide religious purpose.

Second, petitioner contends that respondent has placed it in a "damned if you do, damned if you don't" position and, therefore, that its discussion of tax benefits does, in fact, promote a religious purpose. Specifically, petitioner contends that if its members were not instructed in the details of administering their orders, respondent could deny tax-exempt status to the

individual orders for failure to comply with regulations concerning proper administration of tax-exempt organizations. This argument misconstrues respondent's position. Petitioner is not "damned" because it explains simple record keeping procedures to its members; petitioner is "damned" because its detailed discussions of ways to maximize tax benefits are so pervasive that they constitute a substantial nonexempt purpose.

Third, petitioner contends that its discussions of tax benefits are necessary to attract new members, which is, petitioner claims, the major objective at this stage of the young organization's life. However, a substantial non-exempt purpose does not become an exempt purpose simply because it promotes the organization in some way. See First Libertarian Church v. Commissioner, supra.

Petitioner also makes the general argument that its discussion of taxes cannot be considered "tax avoidance" unless petitioner is a sham. We disagree. There is nothing inconsistent between saying that a religious organization is, in fact, bona fide and denying that organization tax-exempt status because it carries on a substantial nonexempt activity. See, e.g., Bethel Conservative Mennonite Church v. Commissioner, 80 T.C. 352 (1983).

Finally, petitioner argues that denial of its tax-exempt status request would violate the establishment and free exercise clauses of the First Amendment and its equal protection rights under the due process clause of the Fifth Amendment. It is well settled, however, that --

> the Government may constitutionally tax the income of religious organizations * * * [and] may decide not to exercise this power and grant reasonable exemptions to qualifying organizations while continuing to tax those who fail to meet these

qualifications. Parker v. Commissioner, 365 F.2d 792, 795 (8th Cir. 1966), affg. sub nom. Foundation for Divine Meditation, Inc. v. Commissioner, T.C. Memo. 1965-77. Gen. Conf. of The Free Church v. Commissioner, 71 T.C. 920, 930-931 (1979). Tax exemption is a matter of legislative grace and not of constitutional right. See Unitary Mission Church v. Commissioner, 74 T.C. 507 (1980), affd. without opinion 647 F.2d 163 (2d Cir. 1981). Nevertheless, unconstitutional discrimination might well arise if benefits granted to one religious group are denied to others of essentially the same class. See Golden Rule Church Association v. Commissioner, 41 T.C. 719 (1964).

Petitioner's constitutional arguments are based on the assumption that respondent has singled it out for attack because of its "non-traditional" or "unorthodox" beliefs. We find, however, that respondent denied petitioner's

application for tax-exempt status, not because of petitioner's beliefs, but because of petitioner's substantial nonexempt purpose.[14] Petitioner has not suggested that there exists, and, we submit, cannot find, a single instance in which respondent has granted tax-exempt status to a religious organization that carried on activities similar to petitioner's. Consequently, on the record before us, respondent's denial of petitioner's application for tax-exempt status is far from being constitutionally infirm. See, Christian Echoes National Ministry v. United States, 470 F.2d 849

---

[14] We are aware that respondent also "questions" whether petitioner's beliefs are sincerely held. Given the pervasive nature of petitioner's tax avoidance discussions, it is not surprising that respondent would take such a position. However, we are convinced that, given the nature of petitioner's activities, this disbelief was not the reason petitioner's request was denied.

(10th Cir. 1972); Gen. Conf. of The Free Church v. Commissioner, supra.

In the interest of justice, we feel compelled to reiterate the limited nature of our holding. We are not holding today that any group which discusses the tax consequences of donations to and/or expenditures of its organization is in danger of losing or not acquiring tax-exempt status. Our holding today goes only to those organizations whose entire existence is permeated with the purpose of counseling taxpayers on tax matters.

In sum, petitioner is, as we have previously pointed out (see pp. 10-11, supra), nothing more than a commercial tax service, albeit in a narrow range of matters of interest to its members, operating under the cover of a professed religious purpose (which we have accepted as true for the purposes of this case). That religious belief may be the body of

the automobile but its engine and the gasoline on which it runs consist of tax information and advice as to methods of tax avoidance, if not downright tax evasion. There is simply no escape from the conclusion that petitioner is operated for a substantial non-exempt purpose. Accordingly,

Decision will be entered for respondent.

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC., Petitioner,	)
v.	Docket No. 10769-81 X
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)

DECISION

Pursuant to the Opinion of this Court, filed May 2, 1983, it is

DECLARED, ADJUDGED, and DECIDED: That petitioner is not operated exclusively for exempt purposes under section 501(c)(3), Internal Revenue Code of 1954, as amended, and is therefore not entitled to exemption under sections 501(a) and 501(c)(3), Internal Revenue Code of 1954, as amended.

Judge

Entered: May 3, 1983

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC., Petitioner,	)
v.	Docket No. 10769-81 X
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)

O R D E R

Petitioner having, on June 1, 1983, filed a motion for reconsideration of the Opinion of the Court, filed May 2, 1983 (80 T.C. No. 43), together with a brief in support thereof, after due consideration, it is

ORDERED that petitioner's motion is denied. Petitioner's assertion that the Court erred in not permitting evidence to be introduced in addition to the administrative record is without merit. Est of Hawaii v. Commissioner, 71 T.C. 1067, 076 (1979), affd. without opinion

647 F.2d 170 (9th Cir. 1981); Church in Boston v. Commissioner, 71 T.C. 102, 105-106 (1978). See also Tamko Asphalt Products, Inc. of Kansas v. Commissioner, 658 F.2d 735, 738-739 (10th Cir. 1981), affg. 71 T.C. 824 (1979).

Theodore Tannenwald, Jr.
Chief Judge

Dated: Washington, D.C.
June 8, 1983

UNITED STATES TAX COURT

THE ECCLESIASTICAL ORDER OF THE ISM OF AM, INC., Petitioner,	)
v.	Docket No. 10769-81 X
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)

O R D E R

Petitioner having, on June 1, 1983, filed a motion to vacate or revise the decision of the Court in the above entitled case, entered on May 3, 1983, together with a brief in support of said motion, after due consideration, it is

ORDERED that petitioner's motion is denied. Petitioner's assertion that the Court erred in not permitting evidence to be introduced in addition to the administrative record is without merit. Est of Hawaii v. Commissioner, 71 T.C. 1067, 1076 (1979), affd. without opinion 647 F.2d 170 (9th Cir. 1981); Church in

Boston v. Commissioner, 71 T.C. 102, 105-106 (1978). See also Tamko Asphalt Products, Inc. of Kansas v. Commissioner, 658 F.2d 735, 738-739 (10th Cir. 1981), affg. 71 T.C. 824 (1979).

Theodore Tannenwald, Jr.
Chief Judge

Dated: Washington, D.C.
June 8, 1983